

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)
)
Review of the Syndication and) MM Docket No. 95-39
Financial Interest Rules,)
Sections 73.659-72.663 of the)
Commission's Rules)

To: The Commission

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REPLY COMMENTS OF FOX BROADCASTING COMPANY

Fox Broadcasting Company ("FBC"), by its attorneys, hereby submits its Reply Comments in the above-captioned matter.

Since January 30, 1990, when it asked the Commission to initiate the proceeding that will culminate with the sunset of the Financial Interest and Syndication Rules ("fin/syn" or the "rules"), FBC has consistently advocated repeal of the rules for *all* broadcast networks. FBC has argued, and the record has demonstrated, that producers no longer need protection from alleged network over-reaching because the increase in numbers of competing national television outlets has eliminated any legitimate issue of network market power. Furthermore, the record has established that, by constraining the operations of broadcast networks, the rules inhibit competition to cable networks and satellite-interconnected barter syndicators not encumbered by the rules. The Commission and the Seventh Circuit Court of Appeals have agreed, and the rules' scheduled sunset is approaching.

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The record developed in the current phase of this proceeding confirms that the rules may safely be allowed to expire. FBC will not belabor the factual data supporting sunset. Rather, in the interest of a complete record, FBC wishes to place the current proceeding in the proper historical context.

In 1988, FBC was confronted with a regulatory Hobson's choice between having to divest its established program production and distribution businesses, on the one hand, and artificially stifling the growth of its emerging broadcast network. The reason? The fin/syn rules, which effectively prevented -- and continue to prevent -- the common ownership of a broadcast network and television program production businesses.

On June 7, 1988, relying on previous grants of waivers of the rules, FBC sought a limited waiver of the fin/syn restrictions. But the Commission's consideration of FBC's petition was deferred at the request of then Chairman Daniel Inouye of the Senate Communications Subcommittee, who expressed concern that initiation of an FCC fin/syn proceeding would disrupt ongoing negotiations between the Motion Picture Association of America and ABC, CBS and NBC regarding their respective rights in connection with the production, financing and syndication of television programming.

In response to these concerns, FBC advised the Commission that it supported the industry negotiations and shared the Senator's hope that they would resolve the outstanding questions regarding competition in the television program supply industry. Another year and a half of negotiations, however, failed to yield

any meaningful results. So, in 1990, FBC asked the Commission to resume its consideration of the rules with a view toward their repeal for all networks.

Significantly, then sitting FCC Commissioners urged FBC to seek only a narrow waiver of the rules for the exclusive benefit of FBC, while leaving the fin/syn regime undisturbed for the three old networks. To be sure, FBC recognized that its short-term objective could be met by seeking a waiver of the rules, and recognized that the old networks were unable to launch a regulatory initiative for themselves because of long-standing commitments to Congressional leaders. But notwithstanding the obvious appeal of a narrow waiver, Rupert Murdoch directed that FBC set a course favoring broad, even-handed deregulation for all networks.

As an emerging network, FBC was uniquely positioned to assure the Commission that new network entrants did not need to have the established networks subjected to the rules in order to foster new entry. Yet, as a program producer and distributor, FBC also recognized that the Coalition's appealing tale of the lonely producer who mortgages his home and rides into Hollywood in a covered wagon was as phony as a back lot movie set. There simply is no longer a legitimate issue of producer access in today's open and competitive marketplace.

Moreover, FBC believed a rational regulatory policy had to take into consideration twenty years' worth of profound structural change in the video market place. So FBC urged the Commission to reform its regulatory scheme for all networks by taking into account the competition among the networks, and between broadcast networks and networks using different technologies and forms of distribution.

The Commission acknowledged that the rules were stifling competition and diversity by raising barriers to the entry of additional broadcast networks. See Fox Broadcasting Company, 5 FCC Rcd 3211 (1990). Consequently, in order to further its longstanding goals of strengthening competition among stations, increasing programming diversity, and encouraging new national networks, the Commission temporarily waived the application of the rules to FBC and initiated a rulemaking proceeding looking toward the modification or repeal of the rules for all networks. That proceeding has brought the networks and the Commission to the present juncture.

The Commission adopted an incremental approach to deregulation in order to have an opportunity to observe network behavior prior to repeal of the rules. To the extent the Commission wanted to determine whether, in the absence of regulation, broadcast networks would become self-contained entities, producing and exhibiting their own product to the exclusion of outside productions, FBC is a perfect laboratory model. FBC has *never* been constrained as a producer. Yet it currently produces only 3-1/2 of its 15 weekly hours of prime-time network programming. At the same time, it produces a substantial amount of programming *for other networks* -- for example, "Chicago Hope" and "Picket Fences" for CBS.

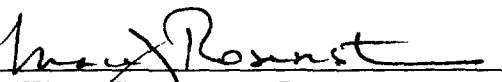
Meanwhile, the video marketplace continues to undergo profound change, of which the growth of the FBC network is just one example. As FBC predicted, improved performance by non-FBC independent stations over the last two years has further strengthened local television markets and provided the basis

for two new over-the-air broadcast networks. Numerous new cable program networks have entered the market for programming, advertising and viewers, and DBS providers are delivering television programming directly to consumers. Even as this proceeding continues, telephone companies are poised to enter the video distribution market.

Any objective appraisal of the record confirms that there is no rational basis for the perpetuation of the rules' restrictions on broadcast networks. The Commission should end its regulatory intervention in a marketplace that has proven, and that this record has proven, to be extremely and increasingly competitive. Accordingly, FBC urges the Commission to expedite the sunset of the remaining fin/syn restrictions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lesha Cruey, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 14th day of June, 1995, a copy of the foregoing Reply Comments of Fox Broadcasting Company was sent by first class mail to:

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